



January 19, 2021

**Via ECF**

Honorable Lorna G. Schofield  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *Nichols, et al. v. Noom, Inc., et al.*, No. 20 Civ. 3677 (LGS) (KHP)

Dear Judge Schofield,

Our firm represents eight individual consumer Plaintiffs and proposed classes of consumers throughout the United States who were ensnared by Defendant Noom, Inc.'s deceptive "negative option" automatic renewal scheme.<sup>1</sup> We respectfully submit this letter motion to seal the confidential information in Plaintiffs' January 19 letter to Your Honor, ECF No. 153. In accordance with Rule I.D.3 of this Court's Individual Rules and Procedures for Civil Cases, Plaintiffs have publicly filed a redacted version of their letter reflecting the fact that Defendants designated certain information in Plaintiffs' letter as "confidential" under the applicable protective order, ECF No. 58. Pursuant to Rule I.D.3, as the parties with an interest in the confidential treatment of the Exhibit, Defendants bear the burden of explaining why it should be sealed.

Contemporaneously with this filing, Plaintiffs are also filing under seal an unredacted copy of their January 19 letter. Plaintiffs have highlighted the portions of the January 19 letter that were redacted in the public version.

Finally, in accordance with Rule I.D.3 included on the next page is an appendix that identifies all parties and attorneys of record who should have access to the sealed version of Plaintiffs' January 19 letter.

Thank you for the Court's attention to this matter.

Respectfully submitted,

/s/ Steven L. Wittels  
Steven L. Wittels

cc: All counsel of record (via ECF)  
Magistrate Judge Katharine H. Parker (via ECF)

---

<sup>1</sup> The Code of Federal Regulations defines a "negative option" as "an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer." 16 C.F.R. § 310.2(t).

## **Appendix**

### **Plaintiffs' Counsel:**

Steven Lance Wittels  
J. Burkett McInturff  
Tiasha Palikovic  
Steven Dana Cohen  
Jessica Hunter  
WITTELS MCINTURFF PALIKOVIC  
18 Half Mile Road  
Armonk, NY 10504

### **Defendants' Counsel:**

Aarti Reddy  
Michael Graham Rhodes  
Ian Ross Shapiro  
Charles Low  
Max A Bernstein  
COOLEY LLP  
101 California Street, 5th Floor  
San Francisco, CA 94111-5800